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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,620	01/22/2002	Mitchell J. Rackovan	AVERP2544USA	7070

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Heidi A. Boehlefeld
Renner, Otto, Boisselle & Sklar, LLP
1621 Euclid Avenue, Nineteenth Floor
Cleveland, OH 44115

EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 03/31/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/054,620

Applicant(s)

RACKOVAN ET AL.

Examiner

Christopher P Bruenjes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

WITHDRAWN REJECTIONS

1. The 35 U.S.C. 112 rejections of claims 1-8 and 10-19 of record in Paper #3, Page 2, Paragraph 1 have been withdrawn due to Applicant's amendment in Paper #4.

2. The 35 U.S.C. 102 rejections of claims 1-2 of record in Paper #3, Pages 3-4, Paragraph 2 have been withdrawn due to Applicant's amendment in Paper #4.

3. The 35 U.S.C. 103 rejections of claims 3-8 and 10-17 of record in Paper #3, Pages 5-7, Paragraph 3 have been withdrawn due to Applicant's amendment in Paper #4.

4. The 35 U.S.C. 103 rejections of claims 18-19 of record in Paper #3, Pages 7-8, Paragraph 4 have been withdrawn due to Applicant's amendment in Paper #4.

NEW REJECTIONS

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recites the limitation "the polyolefin" in line 1. There is insufficient antecedent basis for this limitation in the claim. It is not understood which polyolefin claimed in claim 11 "the polyolefin" is referring to.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-8 and 10-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Josephy et al.

Josephy et al anticipate a halogen-free, multilayered heat shrink film comprising a core layer, a first skin layer and a second skin layer (Fig. 1) that is a printable layer as shown by the fact that the label or film has printability properties

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(col.12, 1.55-57). The core layer is contacted on one side by the first skin layer and on the other side by the second skin layer (Fig. 1, reference numbers 52, 54, and 56). All three layers comprise combinations of homopolymers and copolymers of ethylene, propylene, and 1-butene (col.4, 1.8-11), which includes a homopolymers of 1-butene and copolymer of propylene and 1-butene. The preferred combination is polypropylene and a copolymer of propylene and 1-butene (col.4, 1.11-14). The 1-butene content, in the copolymer of propylene and 1-butene, is from about 3% to about 15% (col.4, 1.26-28). All three layers are blends of the polyolefins listed above with a soft polar additive (col.4, 1.8-10), which is preferably ethylene vinyl acetate copolymer (col.5, 1.10-12) but also includes ethylene methyl acrylate or acrylonitrile butadiene rubber (col.5, 1.17-19). The heat-shrink film is used to encapsulate articles (col.1, 1.13-39 and col.12, 1.54-58).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at

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the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
7. Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Josephy et al (USPN 5,585,193) in view of Call (USPN 4,756,415).

Josephy et al teach all that is claimed in claims 16 and 17 but fails to specifically teach the film for use in encapsulating a battery. However, Call teaches that it is known to use a shrink-wrap material for encapsulating a battery. Typically, this material is a polyethylene (or polyolefin) shrink film (col.3, 1.53-63). Call also teaches that shrink wrap especially of a polyolefin is used for wrapping a battery in order to prevent battery acid leakage during battery storage, handling and installation, and also having the qualities of transparency so that labels and warnings on the battery housing

and cover are visible through the packaging and printability so warnings can be provided on the shrink wrap covering material.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to use the polyolefin shrink-wrapping film of Josephy et al for packaging a battery, in order to prevent leakage as well as make the packaging transparent and printable, when polyolefin film wrapping material such as polyethylene is already known to wrap batteries as taught by Call.

ANSWERS TO APPLICANT'S ARGUMENTS

8. Applicant's arguments filed in Paper #4 regarding the 35 U.S.C. 112 rejections of record have been considered but are moot since the rejections have been withdrawn.

9. Applicant's arguments filed in Paper #4 regarding the 35 U.S.C. 102 rejections of claims 1-2 as anticipated by Idlas have been considered but are moot since the rejections have been withdrawn.

10. Applicant's arguments filed in Paper #4 regarding the 35 U.S.C. 103 rejections of claims 3-8 and 10-17 over Idlas have

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been considered but are moot since the rejections have been withdrawn.

11. Applicant's arguments filed in Paper #4 regarding the 35 U.S.C. 103 rejections of claims 18-19 over Idlas in view of Call have been considered but are moot since the rejections have been withdrawn.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kuo et al (USPN 5,962,092) reads on at least claim 1. Adams et al (USPN 5,709,937), Williams (USPN 6,322,883), Peiffer et al (USPN 5,494,717), and Keller et al (USPN 5,691,043) read on at least claims 1 and 11 except missing additive in the printable layer.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS


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of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P Bruenjes whose telephone number is 703-305-3440. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772
3/20/03

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Christopher P Bruenjes
Examiner
Art Unit 1772

CPB

March 11, 2003

A handwritten signature in cursive script, appearing to read "Chris Bruenjes", written in black ink.